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In re Application of :
TSILIBARY, Photini-Effie, et al. :
U.S. Application No.: 09/000,004 :
PCT No.: PCT/US96/12067 :
International Filing Date: 19 July 1996 :
Priority Date: 21 July 1995 :
Attorney's Docket No.: 600.314USWO :
For: ANALYSIS OF ALPHA INTEGRINS :
FOR THE DIAGNOSIS OF DIABETIC :
NEPHROPATHY :

DECISION ON
PETITION TO WITHDRAW
HOLDING OF ABANDONMENT

This decision is issued in response to the "Petition To Withdraw Holding Of Abandonment (Missing Requirements Notice Not Received)" filed on 01 August 2000. No petition fee is required.

BACKGROUND

On 19 July 1996, applicants filed international application PCT/US96/12067 which claimed a priority date of 21 July 1995 and which designated the United States.

On 20 February 1997, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the International Bureau) and payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 21 January 1998.

On 21 January 1998, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by a check in the amount of \$1,372 (\$1,070 as the basic national fee, \$220 for inclusion of ten extra claims, and \$82 for inclusion of one extra independent claim). The transmittal letter noted that a copy of the international application was not required because the international application was filed in the United States Receiving Office.

On 26 May 1998, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than thirty months from the priority date were required. The Notification also informed applicants that the failure to submit these materials within one month of the date of the Notification would result in abandonment of the application.

On 22 May 2000, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned with respect to the United States for failure to respond to the Notification Of Missing Requirements.

On 01 August 2000, applicants filed the "Petition To Withdraw Holding Of Abandonment (Missing Requirements Notice Not Received)" considered herein. In this petition, applicants assert that the abandonment should be withdrawn because applicants never received the Notification Of Missing Requirements mailed on 26 May 1998.

DISCUSSION

In the present petition, applicants argue that the holding of abandonment should be withdrawn because applicant never received the Notification Of Missing Requirements mailed on 26 May 1998. Section 711.03(c)II of the MPEP sets forth the requirements for such a petition:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Here, the petition contains the required statements from the practitioner that the Notification Of Missing Requirements was not received and that a search of the file jacket and docket records indicates that the Notification Of Missing Requirements was not received.

Regarding the docket records requirement, applicants have attached copies of the docket sheet for this particular file and a declaration from counsel's docketing supervisor regarding the firm's docketing procedures. However, these docket records are not sufficient. They apply only to this particular case, and therefore do not provide evidence as to whether the Notification Of Missing Requirements was received but simply docketed under an incorrect case. Applicant must provide a copy of the general docket record which sets out all the responses due for

counsel's law firm's entire office on 26 June 1998, the date on which a response to the Notification Of Missing Requirements was due. If such a general docket is not maintained by counsel's office, counsel must submit a statement expressly stating that this is the case.

Because the docket sheet submitted by applicant is not adequate, the petition is not grantable in its current form.

CONCLUSION

Applicant's Petition to Withdraw Holding of Abandonment is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw Holding of Abandonment." Extensions of time may be obtained under 37 CFR 1.136(a)

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to attention of the PCT Legal Office.



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